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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 DANIEL W. DANCER,

10 Plaintiff,

11 v.

12 JON JESKE, *et al.*,

13 Defendants.

Case No. 09-5153 BHS/KLS

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL

14 This civil rights action has been referred to United States Magistrate Judge Karen L.
15 Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Before the Court is
16 Plaintiff's motion for appointment of counsel. Dkt. # 5. Having carefully reviewed Plaintiff's
17 motion and balance of the record, the Court finds, for the reasons stated below, that Plaintiff's
18 motion should be denied.

19 **I. DISCUSSION**

20 There is no right to have counsel appointed in cases brought under 42 U.S.C. § 1983.
21 Although the court, under 28 U.S.C. § 1915(d), can request counsel to represent a party proceeding
22 *in forma pauperis*, the court may do so only in exceptional circumstances. *Wilborn v. Escalderon*,
23 789 F.2d 1328, 1331 (9th Cir. 1986); *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984);
24 *Aldabe v. Aldabe*, 616 F.2d 1089 (9th Cir. 1980). A finding of exceptional circumstances requires
25 an evaluation of both the likelihood of success on the merits and the ability of the plaintiff to
26 articulate his claims *pro se* in light of the complexity of the legal issues involved. *Wilborn*, 789
27 F.2d at 1331. Neither of these factors is dispositive and both must be viewed together before

1 reaching a decision on request of counsel under Section 1915(d). *Id.*

2 Plaintiff requests appointment of counsel “in lieu of providing access to legal materials or
3 legal library.” Dkt. # 5, p. 1. Plaintiff filed this motion for counsel at the same time he filed a Writ
4 of Mandamus, requesting that this Court direct the Lewis County Jail produce documents and legal
5 materials for his use in this lawsuit. Dkt. # 4.

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7 Plaintiff has demonstrated an adequate ability to articulate his claims *pro se* and has not
8 demonstrated that the issues involved in this case are complex. Plaintiff’s incarceration and limited
9 access to legal materials are not exceptional factors constituting exceptional circumstances that
10 warrant the appointment of counsel. Rather, they are the type of difficulties encountered by many
11 pro se litigants. Plaintiff has also not shown a likelihood of success on the merits. *See, e.g.,*
12 *Wilborn*, 789 F.2d at 1331. Accordingly, Plaintiff’s motion to appoint counsel (Dkt. # 5) is
13 **DENIED**. The Clerk is directed to send copies of this Order to Plaintiff.
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16 DATED this 24th day of April, 2009.

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20 Karen L. Strombom
21 United States Magistrate Judge
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